

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Leetek America, Inc., a subsidiary of
Lee Technology Korea, Co., Ltd.

)
) File No.: EB-07-SE-132

)
) NAL/Acct. No.: 200832100072

)
) FRN: 0017761271

MEMORANDUM OPINION AND ORDER

Adopted: November 2, 2012

Released: November 2, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we have before us a Petition for Reconsideration¹ filed by Leetek America, Inc. (Leetek)² in response to a *Forfeiture Order*³ issued by the Spectrum Enforcement Division (Division) of the Enforcement Bureau. The *Forfeiture Order* held Leetek liable for a forfeiture in the amount of \$7,000 for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (Act),⁴ and Section 2.803(a) of the Commission's rules (Rules),⁵ based on Leetek's marketing of an unauthorized pager transmitter system.⁶ For the reasons set forth below, we deny Leetek's Petition for Reconsideration.

II. BACKGROUND

2. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."⁷ Section 2.803(a) of the Rules prohibits the sale or lease, offer for sale or lease (including advertising for sale or lease), distribution for the purpose of

¹ Petition for Reconsideration, filed by Leetek America, Inc. (Sept. 27, 2012) (on file in EB-07-SE-132) (Petition for Reconsideration).

² Leetek America, Inc. is the United States subsidiary of Lee Technology Korea, Co. Ltd. (LTK), which manufactures pager transmitter systems for sale in the United States.

³ See *Leetek America, Inc.*, File No. EB-07-SE-132, Order of Forfeiture, DA 12-1531, 2012 WL 4458698 (Enf. Bur. Sept. 25, 2012) (*Forfeiture Order*).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803(a).

⁶ A pager transmitter system is a system licensed under Part 90 of the Rules for low power, secondary use, including paging, in the frequency range 450–470 MHz. See *id.* §§ 90.35, 90.261, 90.267.

⁷ 47 U.S.C. § 302a(b).

selling or leasing (or offering for sale or lease), importation, or shipment, of radio frequency devices,⁸ such as pager transmitter systems unless, in the case of a device subject to certification, the device has first been properly authorized, identified, and labeled in accordance with the Rules.⁹

3. In April 2007, the Division received a complaint alleging that a pager transmitter system marketed by Leetek in the United States was causing interference to licensed operators.¹⁰ On November 5, 2007, Division staff observed that Leetek was advertising for sale on its website pager transmitter systems, including models LTK-1400S and LTK-1700CT, without Commission authorization. The Division subsequently issued a letter of inquiry to Leetek, directing Leetek to submit a sworn response to a series of questions relating to its marketing of pager transmitter systems in the United States.¹¹ In its LOI Response, Leetek admitted that it imported three units of the LTK-1700CT pager transmitter system on September 22, 2007 and that the Commission authorization for the device was not issued until January 3, 2008.¹² Leetek asserted, however, that it imported the three units of the LTK-1700CT for “display in office and test market[ing]” purposes only.¹³ Leetek also stated that LTK, its parent company, “never produced” the LTK-1400S pager transmitter system.¹⁴

4. On August 25, 2008, the Division released a *Notice of Apparent Liability for Forfeiture* to Leetek in the amount of \$14,000.¹⁵ In the *NAL*, the Division found that Leetek apparently violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing two models of pager transmitter systems, the LTK-1700CT and the LTK-1400S, without prior Commission authorization.¹⁶ Leetek responded to the *NAL* on September 2, 2008.¹⁷ In its *NAL* Response, Leetek repeated the argument, initially made in its LOI Response, that it imported three units of the LTK-1700CT solely for the purpose of design review and performance testing.¹⁸ Leetek also clarified its LOI Response with respect to the LTK-1400S pager transmitter system. Specifically, Leetek asserted that it never produced or marketed a

⁸ A radio frequency device is “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

⁹ See *id.* § 2.803(a). Pager transmitter systems are intentional radiators that must be certified by the Commission prior to marketing. See *id.* § 15.201(b). An intentional radiator is a “device that intentionally generates and emits radio frequency energy by radiation or induction.” *Id.* § 15.3(o).

¹⁰ We note that the pager transmitter system that formed the basis of the complaint had been taken out of service by March 31, 2007. Thus, any violation of the Rules occurred outside the applicable statute of limitations.

¹¹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Sungsoo Lee, Chief Executive Officer, Leetek America, Inc. (Jan. 25, 2008) (on file in EB-07-SE-132) (LOI).

¹² See Letter from Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 30, 2008) (on file in EB-07-SE-132) (LOI Response) at 2–3.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ See *Leetek America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Red 12737 (Enf. Bur. 2008) (*NAL*).

¹⁶ See *id.* at 12739–40, para. 8.

¹⁷ See Letter from Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 2, 2008) (on file in EB-07-SE-132) (*NAL* Response). As part of its *NAL* Response, Leetek provided a copy of its 2007 tax return purportedly to demonstrate that at the time of its submission, Leetek as an entity was not “fully organized.” See *id.* at 2.

¹⁸ See *id.*

pager transmitter system denominated “LTK-1400S,” and that its third party website provider mistyped “LTK-1400S” as the model number for Leetek’s authorized LTK-1400A pager transmitter system.¹⁹

5. On September 25, 2012, the Division released the *Forfeiture Order*, imposing a forfeiture in the amount of \$7,000 for Leetek’s marketing of the LTK-1700CT pager transmitter system without Commission authority.²⁰ Based on additional information provided by Leetek in its NAL Response, the Division concluded that the device mistakenly marketed on Leetek’s website under model number “LTK-1400S” was properly authorized and declined to impose a forfeiture as to that model.²¹ On September 27, 2012, Leetek filed a Petition for Reconsideration of the *Forfeiture Order*. In its Petition for Reconsideration, Leetek repeats arguments previously raised with respect to its marketing of the LTK-1700CT pager transmitter system. Leetek also argues for the first time that the LTK-1700CT was incorrectly listed on the company’s website by its third party website provider, and that Leetek and its parent company, LTK, have a history of compliance with the Rules that warrants reconsideration of the forfeiture.²²

III. DISCUSSION

6. Under Section 1.106(c)(1) of the Rules, a petition for reconsideration that relies on facts or arguments not previously presented to the designated authority may be granted only if (1) the facts or arguments relate to events that occurred or circumstances that had changed since the last opportunity to present such matters; or (2) the facts or arguments were unknown to the petitioner, and could not have been known by the petitioner with the exercise of ordinary diligence, until after the petitioner’s last opportunity to present such matters.²³ Section 1.106(c)(2) of the Rules also permits grant of a petition for reconsideration that raises new facts or arguments if the designated authority determines that consideration of the new information is required in the public interest.²⁴

7. In its Petition for Reconsideration, Leetek argues for the first time that the forfeiture should be reconsidered because the LTK-1700CT was mistakenly listed on its website prior to authorization as a result of a misunderstanding with its third party website provider.²⁵ However, Leetek fails to demonstrate, as required by Section 1.106(c)(1) of the Rules, that this new argument relates to changed circumstances or previously unknown facts.²⁶ Indeed, in its NAL Response, Leetek made nearly identical claims about the other model at issue, but failed to mention the alleged communication mistake regarding model LTK-1700CT. As such, the new argument is fatally untimely. Even if Leetek had made this argument at an earlier stage in the proceeding, we disagree that such an error would warrant either a reduction or cancellation of the forfeiture. In contrast to the mistyping of “LTK-1400S” for the authorized model LTK-1400A, in this instance it is undisputed that Leetek advertised the uncertified LTK-1700CT on its website in violation of Section 2.803(a) of the Rules.²⁷ It is well established

¹⁹ See NAL Response at 2.

²⁰ See *Forfeiture Order*, 2012 WL 4458698.

²¹ See *id.* at *2.

²² See Petition for Reconsideration at 2–3.

²³ 47 C.F.R. § 1.106(c)(1).

²⁴ *Id.* § 1.106(c)(2).

²⁵ See Petition for Reconsideration at 2.

²⁶ See 47 C.F.R. § 1.106(c)(1).

²⁷ In this regard, we note that by advertising the LTK-1700CT for sale on its website, Leetek could no longer qualify for either of the potentially applicable import conditions in Section 2.1204 (a) of the Rules. See 47 C.F.R. § 2.1204(a).

Commission precedent that violators are held responsible and accountable for their agents' acts or omissions.²⁸

8. Leetek also seeks reconsideration of the forfeiture based on its claim that both Leetek and LTK have a history of compliance with the Rules.²⁹ In this regard, we note that Leetek's violation of the Rules commenced shortly after its formation as the United States subsidiary of LTK and its entry into the U.S. marketplace.³⁰ We therefore find that Leetek does not have a history of compliance and decline to reduce the forfeiture on this basis.

9. Leetek's final argument, that it imported three units of the LTK-1700CT solely for "design and function review,"³¹ is merely reiterative of an argument that it previously raised and that the Division fully considered and properly rejected in the *Forfeiture Order*.³² We therefore uphold the Division's finding that Leetek willfully³³ and repeatedly³⁴ violated Section 302(b) of the Act and Section 2.803(a) of the Rules³⁵ and decline to further reduce the forfeiture amount.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.106 of the Commission's rules,³⁶ the Petition for Reconsideration filed by Leetek America, Inc. is hereby **DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

²⁸ See, e.g., *Eure Family Ltd. P'ship*, 17 FCC Rcd 21861 (2002) (finding that it is the antenna structure owner's primary responsibility to comply with tower lighting requirements, and denying the claim that the forfeiture should be cancelled because its lessee/contractor did not monitor, or notify it regarding, outages).

²⁹ See Petition for Reconsideration at 2–3.

³⁰ See *NAL*, 23 FCC Rcd at 12738, paras. 3–4.

³¹ See Petition for Reconsideration at 2.

³² See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, para. 27 (2011) (delegating to the relevant bureaus or offices the authority to dismiss or deny petitions for reconsideration of staff level decisions that are procedurally defective or that merely repeat arguments that have been previously considered and rejected). See also, e.g., *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (in denying a petition for reconsideration of related forfeiture orders, the Bureau emphasized that "[a] petition [for reconsideration] that simply reiterates arguments previously considered and rejected will be denied.") (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965)). In the *Forfeiture Order*, the Division correctly concluded that Leetek's marketing of the uncertified LTK-1700CT does not fall within any of the exceptions set forth in Section 2.803(c) or (d) of the Rules. See *Forfeiture Order*, 2012 WL 4458698, at *2, para. 6; see also 47 C.F.R. § 2.803(c), (d).

³³ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, see *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*).

³⁴ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388, para. 5.

³⁵ 47 U.S.C. § 302a(b); 47 C.F.R. § 2.803(a).

³⁶ 47 U.S.C. §§ 154(i), 405; 47 C.F.R. §§ 0.111, 0.311, 1.106.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,³⁷ Leetek America, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand hundred dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended, and Section 2.803(a) of the Commission's rules.³⁸ This matter has been referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.³⁹

12. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail return receipt requested to Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., 530 Highland Station Drive, Suite 2004, Suwanee, GA 30024.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

³⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

³⁸ 47 U.S.C. § 302a(b); 47 C.F.R. § 2.803(a).

³⁹ 47 U.S.C. § 504(a).